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No. 740

In the Supreme Court of the United States

OCTOBER TERM, 1968

STANDARD FRUIT AND STEAMSHIP COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND UNITED FRUIT COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION OF THE UNITED STATES TO DISMISS

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Pursuant to Rule 16(1)(a) of the Rules of this Court, the United States moves that the appeal be dismissed for lack of jurisdiction.

This appeal presents the same question as is before the Court on appellant's motion for leave to file, and petition for, a writ of mandamus, *Standard Fruit and Steamship Company* v. *Honorable Seybourn H. Lynne, et al.*, No. 788 Misc., O.T. 1968. In this appeal, as in that proceeding, appellant seeks review of a district court order (J.S. App. 15–16) denying its motion to inspect and copy documents filed in the district court by United Fruit Company pursuant to a consent de-

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cree against United in a government antitrust action. In No. 788 Misc. we urged that jurisdiction to review the district court's order lies in the court of appeals under 28 U.S.C. 1291, rather than in this Court under Section 2 of the Expediting Act (15 U.S.C. 29), since the district court's order disposed of a private controversy ancillary to the government's antitrust action. *Shenandoah Valley Broadcasting, Inc.* v. *American Society of Composers, Authors and Publishers,* 375 U.S. 39, amended 375 U.S. 994; *Olympic Refining Co.* v. *Carter,* 332 F. 2d 260 (C.A. 9), certiorari denied, 379 U.S. 900. Indeed, Standard Fruit has perfected an appeal to the Court of Appeals for the Fifth Circuit (*United States of America* v. *United Fruit Company, Standard Fruit and Steamship Company,* Appellant, C.A. 5, No. 26,801) and briefs have been filed.

For the reasons stated in the government's Memorandum in Opposition in No. 788 Misc., this appeal should be dismissed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1968.

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